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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Policies and Rules Concerning	)	CC Docket No. 94-129
Unauthorized Changes of	)	
Consumers' Long Distance Carriers	)	

AT&T PETITION FOR LIMITED RECONSIDERATION

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TABLE OF CONTENTS

SUMMARY

The June 14 Order in this proceeding is unsupported by the record insofar as that decision extends the Commission's current verification requirements for carrier selection changes to "inbound" calling by subscribers to IXCs. Moreover, requiring PIC verification of calls placed by customers to IXCs for the purpose of presubscribing to those carriers will subject carriers to substantial -- and almost always unnecessary -- costs and impair their ability effectively to compete for customers, while at the same time subjecting customers to serious inconvenience in their selection of a designated IXC. In view of these serious (and AT&T believes unintended) consequences of the Commission's action, and the absence of any apparent consumer protection need for that revision, the Commission should reconsider and reverse its decision extending PIC verification requirements to customer-initiated calling.

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AT&T PETITION FOR LIMITED RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") requests the Commission to reconsider and reverse its June 14 Order[1] in this proceeding solely to the extent that the decision extends the primary interexchange carrier ("PIC") verification requirements of Section 64.1100 of the Commission's rules to consumer-initiated calls to interexchange carriers ("IXCs").[2]

In the June 14 Order, the Commission adopted new rules to protect consumers from unauthorized changes of their long distance carrier (a practice commonly referred

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[1] Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, FCC 95-225, released June 14, 1995 ("June 14 Order").

[2] Moreover, as shown in AT&T's accompanying motion, in view of the likelihood of harm to both carrier and consumer interests the Commission should stay implementation of the inbound calling verification requirement pending reconsideration of the June 14 Order.

to as "slamming"). In most instances, the procedures prescribed by the Commission appropriately balance consumers' need for protection from slamming against the right of interexchange carriers ("IXCs") to conduct legitimate marketing activities to inform potential customers about their offerings.

However, in one limited but important respect, the Commission's new rules are likely to impose substantial costs and inconvenience on customers and IXCs alike, without providing any significant degree of consumer protection. Specifically, the June 14 Order (¶ 42) extends the scope of Section 64.1100 of the Commission's rules, governing carrier selection changes obtained by telemarketing, to include "consumer-initiated calls to IXC business numbers." In the absence of a signed letter of authorization from the customer, Section 64.1100 requires IXCs to use one of three Commission-prescribed methods to confirm telemarketing-generated carrier changes before submitting those orders to local exchange carriers ("LECs"). In support of this new rule, the June 14 Order merely asserts (id.) that the differences between carrier- and consumer-initiated telemarketing calls do not appear to warrant different treatment under this regulation.

ARGUMENT

THE INBOUND VERIFICATION REQUIREMENT IS UNSUPPORTED IN THE RECORD AND WILL IMPOSE SERIOUS HARDSHIPS ON IXCS AND CUSTOMERS.

There is no need for the Commission to mandate confirmation procedures to protect against deceptive practices on "inbound" telemarketing calls; the record in this proceeding contains no evidence that such abuses have been, or are likely to become, a significant problem. However, it is clear that imposing these requirements on IXCs will subject carriers to substantial costs. Equally significant, these procedures will frustrate consumers' ability conveniently to change their designated IXC, and impede their ability to achieve substantial savings on their telephone bills.

A. Absence Of Record Support For Requiring Verification.

It is axiomatic that in performing its rulemaking function the Commission is required to engage in reasoned decisionmaking based on an adequate factual record that provides a rational foundation for its determinations. *See*, *e.g.*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153 (D.C. Cir. 1987). The *June 14 Order*'s inbound verification requirement lacks this indispensable underpinning.

As a threshold matter, the Commission's decision ignores the fact that the overwhelming majority of parties who commented on this issue contended that it was unnecessary to require any additional consumer protection for inbound calling to IXCs.[3] The June 14 Order (¶ 42) instead states only that "[s]ome commenters" had asserted that existing verification requirements for outbound calling should not also apply to inbound calls, and cites just two of the many filings that had opposed an extension of the Commission's rule.[4] This omission creates the misleading impression that the rule extension was largely unopposed, when in fact it was actively contested by many parties to this proceeding.

Conversely, none of the three commenters cited in the June 14 Order as supporting extension of verification to inbound calls provided any factual showing

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3 See GCI, p. 8 ("There should be no restrictions on marketing by interexchange carriers when a potential customer calls the carriers' 800 number"); LDDS, p. 6 ("LDDS does not believe that it is necessary to increase requirements for customer-initiated PIC changes involving 800 calls"); Lexicom, pp. 5-6 ("[I]f a consumer calls a telephone number advertised and dedicated to consumer-initiated PIC changes and authorizes a PIC change, neither the consumer nor the IXC should be burdened with the additional administrative costs and inconvenience of verifying the consumer-initiated PIC change"); Midcom, p. 11 (stating that no "limitations should be placed on a carriers' use of `800' numbers as a marketing device"); One Call, p. 12 (verification procedures for outbound calling "were not designed nor should they be extended to include incoming consumer-initiated inquiries"): Sprint, p. 15 ("verification requirements such as those imposed on carrier-initiated telemarketing . . . would only add to the cost of long distance sales . . . The Commission presents no evidence that there is a significant number of consumers who claim to have been 'slammed' after a customer-initiated call to an IXC's 800 number").

4 See June 14 Order, n.85 (citing AT&T and MCI comments).

that customers placing such calls have been subjected to slamming.[5] For example, Touch 1 stated (p. 8) that, while it opposed any limitations on a carrier's use of toll-free numbers for marketing purposes (including carrier selection), existing outbound verification procedures could be applied to inbound calling "[i]f the Commission anticipates a problem" with such calls. Conspicuously absent from Touch 1's comments is any evidence that could provide a basis for the Commission to anticipate the need for an inbound verification requirement.

The comments of Consumer Action cited in the June 14 Order likewise provide no factual basis for requiring verification of inbound calls. Rather than providing any instances of actual slamming related to such calling, Consumer Action merely described (p. 4) a hypothetical (and highly improbable) scenario in which unscrupulous IXCs that can no longer lawfully combine certain inducements with LOAs might instead mail marketing literature promising such inducements to entice consumers

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5 Indeed, at least one of the cited parties did not support the inbound verification requirement at all. Specifically, GTE's comments merely observed (p. 5) that some IXCs used toll free numbers both to provide information in response to customer inquiries regarding PIC changes, and also for electronic verification of PIC orders. GTE urged that this combined usage be allowed to continue; its comments did not even address -- much less support -- a verification requirement for carrier selections obtained through inbound calling.

to call those carriers, and then subject the callers to unauthorized conversions.[6] Neither Consumer Action's comments nor the June 14 Order, however, point to any evidence to substantiate this speculation.[7]

Review of the record also discloses no other evidence omitted from the June 14 Order that could conceivably provide factual support for the inbound verification requirement. For example, although the comments of the National Association of Attorneys General ("NAAG") expressed support (pp. 10-11) for extending verification requirements to inbound calls, none of the instances cited by NAAG as the basis for its position involve slamming by an IXC. Rather, all of NAAG's

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6 Consumer Action fails to explain why any carrier bent on slamming would need to resort to such an elaborate ruse; as AT&T showed in its Comments (pp. 4-5), customers who have been converted without authorization to another IXC (and, in particular, non-English speaking subscribers) usually have not even been contacted by the offending carrier, and often are not even aware of their change in presubscription status.

7 The June 14 Order's additional claim (again echoing Consumer Action's arguments) that customers making inbound calls are "as subject to unauthorized conversion" as subscribers telemarketed to by an IXC is likewise unsupported by any record evidence that any appreciable amount of slamming occurs on inbound calls (much less that it is equally prevalent as with outbound calling). This unsubstantiated claim also ignores that, as AT&T (Comments, p. 22) and other parties showed (see n.3, supra), inbound calling differs greatly from outbound telemarketing calls with respect to a customer's ability to control the timing, duration, and content of the call (or even avoid such communications altogether), thereby virtually negating the possibility of being slammed.

"documented . . . cases" (p. 11) concern local exchange carriers ("LECs") that have "'packed' unordered, optional services with customer telephone orders for other services."[8] These abuses by LECs provide no logical basis for applying the verification requirement to inbound calling to IXCs.

Finally, the Commission's experience with "thousands of complaints . . . received regarding unauthorized changes of consumers' [presubscribed carrier]," as described in the June 14 Order (¶ 1), provides no record for rulemaking in the specific context of the inbound verification requirement. As AT&T has shown,[9] in response to a Freedom of Information Act ("FOIA") request by AT&T for disclosure of informal complaints of slamming described in the NPRM, the Commission listed only 4 cases of alleged slamming through "[c]hanges resulting from 800 [calls]" -- less than one percent of the total complaints sampled.[10] Especially in light of the conceded paucity of evidence in its own files, the Commission cannot plausibly conclude that there

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8 See NAAG Comments, p. 11 and n.9; id., Appendix pp. 169, 179.

9 See Ex parte Letter from Peter H. Jacoby, AT&T, to William F. Caton, FCC, dated June 8, 1995 with Exhibits.

10 See id., Exhibit 6 (Letter from Gregory A. Weiss, FCC, to Peter H. Jacoby, AT&T, dated December 30, 1994 re: FOIA Control No. 94-400, Attachment).

was any rational basis to impose a verification requirement on inbound calling.

B. Impact Of The Requirement On Carriers And Customers.

As shown above, even if the inbound calling requirement were innocuous the Commission should reconsider and vacate that directive due to the absence of an adequate basis for adopting that provision. But the inbound calling verification requirement is anything but benign; to the contrary, it is clear that procedure will inflict substantial, needless expense and inconvenience on IXCS and on customers seeking to make carrier changes.[11]

Specifically, as shown in the accompanying Declaration of Georgeana R. Neff, AT&T's Director - Prospects Markets ("Neff Declaration"), only two of the confirmation methods specified by the Commission's rules are practical for use (individually or in combination) with consumer-initiated telemarketing calls: verification of the customer's order by an independent third party, and

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[11] Because this proceeding has focused particularly on the benefits to residential subscribers of the Commission's rules against slamming, AT&T has likewise focused in its reconsideration petition on the impact of the inbound verification on those customers and on IXCs' ability to serve those subscribers' PIC change requests. However, as shown in the Neff Declaration (¶ 3 n.1), the inbound verification requirement can also be expected to subject IXCs to additional expense and revenue losses to serve business customers requesting PIC changes, and to inflict delay and inconvenience on business subscribers that place PIC change orders with their preferred IXC.

mailing of a prescribed information package to the customer, followed by a 14-day "holdfast" period to allow the customer to disclaim the carrier change.[12] On-line verification for inbound calls by an independent third party (which is most convenient for customers) would be burdensome to implement because of the large and diverse group of calling centers which may process inbound calls.[13] On-line verification for these calls would also be far more expensive for IXCs to implement than for outbound telemarketing, because traffic volumes would be more difficult to forecast.[14] The information package

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[12] See Section 64.1100(c), (d). The remaining method permitted by the rule, electronic authorization through a voice response unit, is impractical to implement for customer-initiated calls because AT&T's inbound telemarketing centers cannot always pass automatic numbering identification ("ANI") to the response unit, as required by the rule. Moreover, the rule requires a call to be placed from the telephone for which the carrier change is desired, while in AT&T's experience only 40 percent of residential customers' inbound calls are placed from their home telephones. Further, electronic authorization is infeasible for the up to 20 percent of residential customers with rotary dial telephones. See Neff Declaration, ¶ 5.

[13] For example, customer-initiated calls requesting carrier changes may be processed by AT&T both at inbound telemarketing centers and at centers handling bill inquiries and other customer service questions. By contrast, AT&T's outbound residential telemarketing is usually conducted from a small number of telemarketing centers.

[14] In all events, moreover, AT&T estimates that the system changes required for on-line transfer of inbound calls from a multiplicity of call servicing centers to an independent third-party verifier will require substantially longer than the 60-day period from

(footnote continued on following page)

option, while less expensive to implement, would necessarily result in a substantial delay in implementing the customer's carrier choice, and a consequent loss of revenue to the IXC.

AT&T estimates that implementing these confirmation methods (or a combination of these options) in its inbound calling centers for residential subscribers could cost up to $36.5 million annually (with start-up costs of as much as $3.1 million). Neff Declaration, ¶¶ 7, 9-10. Moreover, depending upon the "mix" of confirmation methods used by its inbound centers, AT&T estimates that the loss of revenues due to delays in implementing customers' carrier change orders could reach $65 million annually. Id., ¶¶ 8-9, 11. AT&T anticipates that other IXCs will likewise incur substantial expenses and lost revenues as a result of the Commission's ruling on inbound calling.

While these burdens on IXCs, standing alone, would in themselves warrant modification of the Commission's decision, the expected impact of that ruling on consumers should likewise impel the Commission to reconsider its order on inbound call verification. Residential customers who place calls to an IXC's inbound

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(footnote continued from previous page)

Federal Register publication prescribed in the Commission's order. Neff Declaration, ¶¶ 4, 6.

telemarketing or call servicing center requesting a change in their long distance carrier expect those orders to be implemented conveniently and promptly by the IXC, without further involvement by the customer. The procedures required by the Commission's order would subject these customers to burdensome -- and, as shown above, almost always unnecessary -- duplication of effort and delay, simply to process carrier change orders that those consumers themselves initiated.[15]

Customers would also be unable readily to obtain the benefits of price discounts or related offerings that are dependent on their carrier selection status, such as AT&T's True USA℠, True Savings℠ and True Rewards® offerings. AT&T estimates that delays in processing carrier changes occasioned by the Commission's decision could result in depriving customers of up to $26 million annually in savings under these programs alone. Neff Declaration, ¶ 6.

The Commission's decision simply fails to take into account the serious adverse effects on customers described above of the inbound call verification requirement. Far from providing any tangible consumer protection, as the Commission clearly intended, in this limited respect the June 14 Order will only inflict

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[15] See Neff Declaration, ¶ 9.

additional inconvenience, delay and costs on those subscribers. The only course that can vindicate the Commission's pro-consumer objectives in this proceeding is to reconsider and vacate the verification requirement for inbound calling.

CONCLUSION

For the reasons stated above, the Commission should reconsider and reverse its decision extending PIC verification requirements to customer-initiated calling.

Respectfully submitted,

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By ______________________
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August 4, 1995

DECLARATION OF GEORGEANA R. NEFF

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 94-129

DECLARATION OF GEORGEANA NEFF

I, Georgeana Neff, declare as follows:

1. I am Director--Prospects Markets for AT&T's Consumer Communications Services business unit. I am responsible for marketing to residential consumers who are presubscribed to an interexchange carrier (IXC) other than AT&T in an effort to convince the customer to switch his or her service to AT&T (otherwise known as customer acquisition activities). In that capacity, I am familiar with the procedures AT&T currently uses to verify a customer's order to switch carriers, as well as the costs associated with those procedures.

2. In my capacity with AT&T, I am familiar with the Commission's current regulation of the interexchange carrier selection process. I also am familiar with the effects on AT&T of the Report and Order in Common Carrier Docket 94-129 released by the Commission on June 14, 1995

(the Order), including the effects the Order would have on AT&T's expenses and revenues associated with customer acquisition activities. I make this Declaration in support of AT&T's accompanying Petition for Limited Reconsideration of the Order insofar as it expands the verification requirement to in-bound calls, as well as AT&T's Motion for Stay of that aspect of the Order.

3. The Order extends the primary interexhange carrier (PIC) verification procedures contained in Section 64.1100 to consumer-initiated calls to an IXC ("in-bound calls"). Previously, the PIC verification procedures applied only to calls initiated by the IXC.[1]

4. AT&T receives a wide variety of in-bound calls, including calls made in response to direct mail, mass media advertising or bill messages, and calls made by a consumer for purposes of making an inquiry about a bill or simply to seek information about AT&T. All of these call types result in requests by consumers for PIC changes to AT&T. Depending on the reason for the customer's call to

[1] While my Declaration specifically addresses the impact of the Order on the residential segment of AT&T's operations (as well as on residential customers), based on my overall familiarity with AT&T's operations it is apparent that the in-bound verification requirement would also impose additional costs on AT&T for compliance with respect to business subscribers seeking to implement PIC changes for their lines, and would in many cases inconvenience those customers and subject them to delays in arranging their PIC changes.

AT&T and where he or she obtained the 800 number being called, the in-bound call could be directed to any of 21 AT&T customer sales and service centers located around the country. To comply with the Order, AT&T would have to implement PIC verification procedures in each of these centers.

5. Section 64.1100 allows for three different methods of PIC verification: (1)obtaining electronic authorization from the customer; (2) transferring the call to a third party for independent verification of the customer's authorization; or (3) mailing the customer confirmation of the order, and allow the customer 14 days to return a postcard declining the order before processing the PIC change. The first method is not practical because AT&T's in-bound centers cannot always pass the ANI to a response unit. In addition, only about 40% of in-bound calls are made by customers who are using the telephone for which a PIC change is being requested.

6. Implementation of PIC verification on in-bound calls using either the second or third method, or a combination of the two methods, would result in significantly increased costs for AT&T for initial implementation and on-going maintenance of the process, as more fully explained below. In addition, use of the third method for all or some in-bound PICs would result in a 14 to

17 day delay before the customer could be switched to AT&T, with an accompanying loss of revenue to AT&T. Moreover, customers would lose discounts in the range of $26 million annually. Such customer losses would occur because AT&T's most popular discount options, AT&T True Rewards, AT&T True USA Savings and AT&T True Savings, all require the customer to be PICed to AT&T to receive the benefits of the options. Finally, because of the massive systems changes required to implement PIC verification procedures in AT&T's in-bound centers, it will be impossible for AT&T to complete the necessary changes in all 21 centers in the 60 day period before the rule change contemplated by the Order is effective.

7. AT&T is considering various alternatives for implementation of PIC confirmation procedures in its in-bound centers. The first alternative would be 100% utilization of the third method identified in paragraph 5 above (i.e., mailing customers a "welcome package" and awaiting a customer response for 14 days). The total start-up costs associated with this method are estimated to be $1.2 million, with annual additional expenses of approximately $17.3 million; these costs are broken down as follows:

1. Systems Costs: AT&T would incur costs for development and production of new databases to store

in-bound telemarketing sales, with the capability of checking daily to determine whether the customer has returned the postcard declining the order of AT&T. In addition, there would be costs associated with the maintenance, daily production reporting, order status and reporting capability, and updating and maintaining scripts for use by AT&T's customer service representatives. Start-up costs are estimated to be $820,000, with annual maintenance costs of $405,000.

2. Fulfillment Costs: AT&T will incur expenses associated with the start-up of vendors to perform fulfillment (physical mailing of the verification letter to the customer), and the costs for printing, producing and mailing of the fulfillment materials. Start-up costs are estimated to be $200,000, with annual maintenance costs of $9,450,000.

3. Center Expenses: Implementation of this rule will result in expenses for development and delivery of training to AT&T's customer service representatives, as well as increased expenses because of incremental call volume (customers calling to check the status of their order) and incremental talk time to explain the order process. Start-up costs are estimated to be $187,000, with annual costs of $7,400,000.

8. In addition to the additional costs described above, having to wait 14 to 17 days to process the PIC change will result in lost revenue. AT&T estimates that the delay will result in an annual revenue loss of $65 million. This figure is derived by multiplying the estimated number of customers who switch to AT&T via an in-bound telemarketing call by the average per customer revenue received by AT&T during a 17 day period.

9. A second alternative open to AT&T would be to utilize 100% third-party verification of all in-bound PIC change requests. The total start-up costs associated with this method are estimated to be $3.1 million, with annual additional expenses of approximately $36.6 million; these costs are broken down as follows:

1. Systems Expenses: AT&T would incur costs for development and implementation of systems changes at all 21 in-bound centers to provide third party verification functionality, including purchasing new equipment and data lines to handle new agencies and increased verification volumes. In addition, this method would require development and production of new in-bound telemarketing codes and reports. Finally, there would be costs associated with the maintenance, daily production reporting, order status and reporting capability, and updating and

maintaining scripts for use by AT&T's customer service representatives. Start-up costs are estimated to be $2,350,000, with annual costs of $270,000.

2. Vendor Expenses: AT&T would need to obtain new third party verification agencies, or expand its relationship with existing third party verification agencies (who currently handle only out-bound telemarketing PIC verification). Start-up costs are estimated to be $320,000, with annual costs of $18,000,000.

3. Center Expenses: Implementation of this rule will result in expenses for development and delivery of training to AT&T's customer service representatives, as well as increased expenses because of incremental call volume (customer call backs if the verification process cannot be completed on the initial call) and incremental talk time to explain the order process. Start-up costs are estimated to be $483,000, with annual costs of $18,341,000.

Use of this method will also result in some lost revenue to AT&T, caused by the fact that AT&T will not be able to complete the verification process on the first call for all customers, either because the third party verifier is busy or cannot be reached (necessitating a later call back to the customer or use of the fulfillment method described in paragraph 7), or because the customer refuses to be transferred to the verifier. Lost revenue (using the same formula described in paragraph 8) is estimated to be over $2.3 million per year.

10. The final alternative would be to utilize a combination of the two methods described above, with some third party verification, and some mailing of an information package to the customer to verify the order. Even if AT&T implements the most logical combination of the two methods in each of its centers (which varies based on the particular configuration of the center, and how quickly each of the particular methods can be implemented), the total start-up costs associated with this method are estimated to be $3.3 million, with annual additional expenses of $26.4 million; these costs are broken down as follows:

1. Systems Expenses: AT&T would incur systems costs as described in both paragraphs 7 and 9, above. Start-up costs are estimated to be $2,620,000, with annual costs of $405,000.
2. Fulfillment Expenses: AT&T would incur the type of fulfillment expenses described in paragraph 7. Start-up costs are estimated to be $200,000, with annual costs of $4,725,000.

3. Center Expenses: AT&T would incur additional expenses at its telemarketing centers, as described in paragraphs 7 and 9, above. Start-up costs are estimated to be $251,000, with annual costs of $12,206,000.

4. Vendor Expenses: AT&T would incur expenses associated with an increased number of third party verification agencies, as described in paragraph 9. Start-up costs are estimated to be $270,000, with annual costs of $9,036,000.

11. Lost revenues to AT&T from use of the most logical combination of methods to verify in-bound telemarketing orders results in a revenue loss of $29,000,000. While smaller estimated revenue loss could be achieved by using more third party verification, doing so would delay implementation of the verification process because third party verification takes longer to implement and would increase implementation expenses. Therefore, AT&T necessarily will have to implement the "mail a welcome kit and wait for a response" method for those centers where third party verification is impractical to implement quickly.